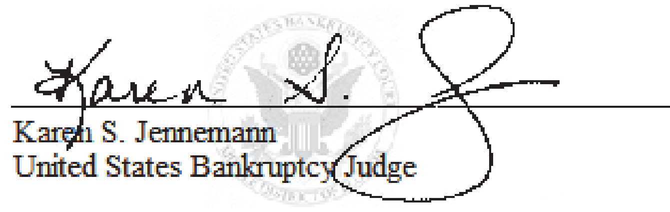
ORDERED.

Dated: August 06, 2019



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re	)	
	)	
MELBOURNE BEACH, LLC,	)	Case No. 6:17-bk-07975-KSJ
	)	Chapter 11
Debtor.	)	
	)	

ORDER DENYING DISPUTED OWNERS' MOTION TO DISMISS AND DIRECTING APPOINTMENT OF A CHAPTER 11 TRUSTEE

For years, Brian West, who owns at least 49% of the Debtor, has engaged in aggressive and expensive litigation against Pirogee Investments, LLC and Yellow Funding Corp. (the "Disputed Owners") over the legitimacy of their ownership interests and West's management of the Debtor. West filed this Chapter 11 case trying to stop this litigation.[1] Now, after spending more than a full year in this bankruptcy case and making significant positive progress, including successfully completing mediation, reaching an extensive settlement agreement between West and the Disputed Owners, and appointing a Chief Restructuring Officer, who stabilized the Debtor's business and proposed a cash sale for the Debtor's assets of approximately $15 million, the

[1] Doc. No. 1. The petition initiating this Chapter 11 case was filed on December 26, 2017.

Disputed Owners seek dismissal or abstention arguing bad faith and West's lack of corporate authority to file.[2] The motion is denied.

The Debtor

Debtor owns and operates a large shopping center in Melbourne Beach, Florida. West, an experienced real estate developer, is a founding member of the Debtor. He bought the Debtor to renovate and then to sell the business for a profit.

In July 2002, the Debtor purchased additional real property adjacent to the shopping center to increase its retail space. With the purchase, and assumedly for supplying needed capital, David Kalichman ("Kalichman") and Ilya Palinsky ("Palinsky") acquired interests in the Debtor. West, Kalichman and Palinsky then signed a Second Amended and Restated Operating Agreement (the "Operating Agreement") of the Debtor.[3] The Operating Agreement provided, among other items, that:

- Florida law controls;[4]
- Debtor's stated purpose was to operate the shopping center until a sale occurred;[5]
- West had a 50% ownership interest;[6]
- Palinsky had a 33.34% ownership interest;[7]
- Kalichman had a 16.66% ownership interest;[8] and
- West would act as the Managing Member of the Debtor.[9]

On July 30, 2003, the Debtor sought to refinance an existing loan[10] and concurrently amended its Operating Agreement (the "Amended Operating Agreement") to add provisions

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[2] Doc. Nos. 267. Responses and related pleadings include: Doc Nos. 297, 306, 311, 318, 319, 333, 334. A trial was held on April 11, 2019.
[3] Movants' Ex. 47.
[4] Movants' Ex. 47, pg. 8, Article 1.2.
[5] Movants' Ex. 47, pg. 8, 21-22, Articles 2.3.1 and 9.3.
[6] Movants' Ex. 47, pg. 10, Article 3.1.
[7] Movants' Ex. 47, pg. 10, Article 3.1.
[8] Movants' Ex. 47, pg. 10, Article 3.1.
[9] Movants' Ex. 47, pg. 8, Article 2.1.1 and 2.1.2. In the related Debtor's Amended and Restated Articles of Organization, also signed in July 2002, Article IV confirms that Brian West was the Managing Member. Movant's Ex. 47, pg. 37.
[10] West Ex. 40.

requested by the lender.[11] The Amended Operating Agreement, signed by West, Kalichman and Palinsky, made two relevant changes. First, the Amended Operating Agreement, in Paragraph (3)(b)(19), provided that the Debtor could not file a bankruptcy case. Second, in Paragraph 5, West assigned 1% of his interest in the Debtor to West Melbourne, Inc., who thereafter was the Managing Member of the Debtor.

Later, the Disputed Owners *perhaps* acquired the ownership interests of Palinsky and Kalichman in the Debtor.[12] The Court, however, makes no finding whether the Disputed Owners have any interest in the Debtors, reserving that dispute for another day and perhaps another court.

The Court, however, can conclude that upon the arrival of the Disputed Owners any semblance of cooperation or civility between West and the Debtor's co-owners evaporated. The parties could not agree on how to operate or sell the shopping center. They could not agree on anything, each side blaming and attacking the other. In 2014, the Debtor, acting through West, filed a lawsuit in Martin County, Florida, naming the Disputed Owners and others.[13] For the next three years, the parties continued to fight in state court, flinging claims back and forth and making little progress in resolving their disputes or selling the property.[14]

<u>The Chapter 11 Case</u>

On December 26, 2017, prior to a state court hearing to appoint a receiver for the Debtor and to stop the escalating and expensive litigation, West filed this Chapter 11 case on behalf of Melbourne Beach, LLC.[15] West signed the petition as Managing Member of the Debtor.[16] The Debtor's bankruptcy schedules disclosed over $15 million of assets, consisting primarily of the

[11] Movants' Ex. 47, pg. 41.
[12] West Ex. 28, pgs. 134-145.
[13] West Ex. 28, Movants' Ex. 98.
[14] Movants' Ex. 98.
[15] West Ex. 1.
[16] Doc. No. 1, pg. 4.

shopping center, and approximately $2 million of liabilities, of which approximately $516,000 was secured by the Debtor's real property.[17] The balance of the debts are unsecured with at least $80,000 due to legitimate, undisputed, non-insider unsecured creditors for expenses including roof repairs, routine leasing commissions, and tenant improvements.[18] These pre-petition unsecured claims remain unpaid.

The Disputed Owners promptly filed a Motion to Dismiss asserting West's lack of corporate authority to file the case and bad faith.[19] Other contested disputes also quickly arose in this hotly adversarial conflict between West and the Disputed Owners. Hoping to defuse these tensions, I entered an order directing the parties to mediation.[20]

On May 23, 2018, the Debtor, Brian West, and the Disputed Owners (collectively the "Parties") signed a Partial Settlement Agreement (the "Settlement Agreement").[21] The Settlement Agreement, although not a global resolution of all issues, was extensive. The Parties agreed to withdraw, without prejudice, all pending motions, including the Disputed Owners' initial motion to dismiss, and to appoint a chief restructuring officer ("CRO") for the Debtor.[22]

The CRO would manage the Debtor, supervise the Debtor's finances, and review existing leases. He brought extensive professional experience and restored stability to the Debtor's business. The Settlement Agreement also gave the CRO authority to recommend a sale process of the Debtor's real property. The Parties, excluding the Debtor, retained all rights to object to the any sale sought by the CRO.

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[17] West Ex. 1.
[18] West Ex. 1, Doc. No. 1, pgs. 15-17.
[19] Doc. No. 21; Movants' Ex. 2, 6.
[20] Doc. No. 128; Movants' Ex. 13.
[21] Doc. No. 163. The Settlement Agreement was approved on June 26, 2018. Doc. No. 174. Movant's Ex. 22, 24.
[22] In reviewing the docket, I could not locate an official withdrawal of the Disputed Owner's original Motion to Dismiss (Doc. No. 21). They, however, expressly agreed to withdraw that motion in the Settlement Agreement, and it is deemed withdrawn for all purposes.

Approximately five months later, the CRO, as requested by the Parties, filed motions seeking to sell the Debtor's real property for approximately $15 million and to approve procedures and closing/loan documents associated with the sale.[23] The Parties, however, objected to the sale and to the closing within this bankruptcy case.[24] The sale, which would have generated *millions* of dollars to split between the Debtors' owners, therefore, was denied.[25]

By the time the sale collapsed, the Debtor already had paid off the secured debt.[26] The appointed CRO was efficiently running the Debtor's operations, managing its finances, promptly filing financial reports, and proposing a profitable sale that would have satisfied all claims between the warring owners. The CRO, however, still cannot pay the Debtor's non-insider, legitimate pre-petition creditors even though, based on its operations alone, the Debtor has generated net profits of over $700,000 during this Chapter 11 case. The Debtor, the CRO, and these unsecured creditors essentially are being held hostage by the Debtor's litigious owners.

Now, after all these promising steps made during this Chapter 11 case, the Disputed Owners again move to dismiss the Debtor's Chapter 11 case.[27] They again challenge the corporate authority of West to file this case and argue bad faith; they alternatively argue abstention is appropriate. West argues in response that the bankruptcy was properly authorized, and if not, the Disputed Owners, by their participation, have ratified the bankruptcy filing.[28] West further denies that the Debtor filed this case in bad faith.

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[23] Doc. Nos. 238, 239, 243; Movants' Ex. 32, 33.
[24] West filed a limited objection to the sale. Doc. No. 249, Movants' Ex. No. 34. The Disputed Owners refused to allow the sale to close within the confines of this Chapter 11 case.
[25] Doc. No. 255; Movants' Ex. 36.
[26] Movants' Ex. 29.
[27] Doc. No. 267. Palinsky later filed a joinder. Doc. No. 311. A trial was held on April 11, 2019.
[28] Doc. Nos. 297, 306, 311, 318, 319.

Authority to File

On the first point, the Court agrees that West did not have the authority to file this case. Whether a bankruptcy filing is authorized depends on applicable state law and the unique facts of each case.[29] A case filed by a person without proper corporate authority usually is dismissed.[30] Here, the Court looks to state law, specifically Florida's revised limited liability law, to determine whether West, acting alone, could file a Chapter 11 petition on behalf of the Debtor.

Section 605.04073 of the Florida Statutes provides "[e]xcept as otherwise provided in this chapter, the affirmative vote or consent of a majority-in-interest of the members is required to undertake an act…outside the ordinary course of the company's activities and affairs, including a transaction under ss. 605.1001-605.1072" for both member-managed and manager-managed limited liability companies.[31] The decision to file bankruptcy is an act outside of the ordinary course of any business[32] and is more than a mere, everyday business decision.[33]

Under Florida law the Debtor, a Member Managed LLC, must get the consent of the requisite majority of members to take the outside of ordinary course action of filing a Chapter 11 case. No member vote occurred, and even if it did, West's 49% vote could not establish the required majority-in-interest of the members.

The Amended Operating Agreement also prohibited West from filing this case. In Paragraph (3)(b)(19) of the Amended Operating Agreement, the Debtor's members agreed to prohibit the Debtor from filing any bankruptcy petition. Although courts rarely enforce these *ipso*

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[29] *In re H & W Food Mart, LLC*, 461 B.R. 904, 907 (Bankr. N.D. Ga. 2011).
[30] *Id.* at 906-07(citing *In re A–Z Electronics, LLC*, 350 B.R. 886, 891 (Bankr. D. Idaho 2006)).
[31] Fla. Stat. § 605.04073(1)(c), (2)(d) (2018).
[32] *See In re Zaragosa Properties, Inc*. 156 B.R. 310, 313 (Bankr. M.D. Fla. 1993)("Certainly, filing a Petition for Relief under Title 11 is not the ordinary course of anyone's business.").
[33] *See In re Bel-Aire Investments, Inc.*, 97 B.R. 88, 89 (Bankr. M.D. Fla. 1989). In *Bel-Aire*, one of the corporation's two directors filed a voluntary petition without the consent of the other director. The court held that "[t]here is no question that the authority to manage the affairs of the corporation does not include the right to file a petition for relief under any of the operating chapters of the Bankruptcy Code." *Id.* at 89-90.

facto restrictions on future bankruptcy filings when forced upon them by creditors for public policy reasons,[34] different policy considerations arise when co-owners rely on the clause prohibiting bankruptcy. [35] Why couldn't members agree the company will not file bankruptcy? They always can consent otherwise or revise the corporate documents. But, once in place, public policy favors upholding a consensual operating agreement among members, including enforcing provisions prohibiting future bankruptcy filings.

Last, even if the Debtor's Managing Member could file a bankruptcy case without getting consent of most members, here, the Managing Member did not sign the petition initiating this Chapter 11 case. Article 7.1.1 of the Operating Agreement states "A Member who is not a Managing Member has no power or authority to manage the Company or its business and is deemed to have delegated same in the Managing Member." The Amended Operating Agreement provides that West Melbourne, Inc. is the Managing Member. West, *individually*, has no power or authority to manage the Debtor or its business, including filing the petition. West did not demonstrate what role he has with West Melbourne, Inc. And, West Melbourne, Inc. did not sign the bankruptcy petition.

West lacked the authority to file this bankruptcy case. Florida law provides the consent of most members was required. No vote seeking such consent was taken. The Amended Operating Agreement expressly prohibits the bankruptcy filing. And, even if these two hurdles were cleared, here, the Managing Member, West Melbourne, Inc., did not sign the petition.

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[34] *In re Intervention Energy Holdings, LLC*, 553 B.R. 258, 265 (Bankr. D. Del. 2016); *In re Citadel Properties, Inc.*, 86 B.R. 275, 275 (Bankr. M.D. Fla. 1988)("The Court pauses to suggest that a total prohibition against filing for bankruptcy would be contrary to Constitutional authority as well as public policy.").
[35] *See In re CB Capital Holdings*, *LLC*, Nos. CO-10-046, 10-23242, 2010 WL 4925811, *3 (B.A.P. 10th Cir. Dec. 6, 2010).

Consent by Ratification

That, however, is not the end of the analysis. West argues the Disputed Owners joined by Palinsky ratified the bankruptcy filing, which they clearly can do, by their extensive participation in this Chapter 11 case. By participating and accepting the benefits of the bankruptcy filing, as the Disputed Owners did, and simultaneously arguing for dismissal, Movants attempt to have it both ways.

Black letter bankruptcy law says that an unauthorized bankruptcy petition, like this case, may be ratified by those with the power to authorize the filing originally,[36] when they actively participate in the bankruptcy proceeding.[37] "The Eleventh Circuit has acknowledged that '[a] principal can ratify the unauthorized act of an agent purportedly done on behalf of the principal either expressly or by implication through conduct that is inconsistent with an intention to repudiate the unauthorized act.'"[38] To determine whether a principal ratified a company's unauthorized bankruptcy filing, courts apply the state law of the filing company.[39]

Under Florida law, ratification occurs where a person expressly or impliedly adopts the act of another, even if initially taken without authority.[40] The principal may adopt the unauthorized act expressly, either in writing or verbally, or impliedly, by accepting the benefits of the

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[36] West, the Disputed Owners and Palinsky comprise the majority of all conceivable parties who could authorize the bankruptcy filing.

[37] *In re Mojo Brands Media, LLC*, No. 6:15-BK-03871-CCJ, 2016 WL 1072508, at *1 (Bankr. M.D. Fla. Mar. 16, 2016); *See also In re Amir*, 436 B.R. 1, 18 (B.A.P. 6th Cir. 2010)("[T]here is no doubt that both the passage of time and [debtor's] participation in the case demonstrate that he ratified the filing of the petition"); *Hager v. Gibson*, 108 F.3d 35, 40 (4th Cir. 1997)("We therefore conclude that under Virginia law, the unauthorized filing of a voluntary petition in bankruptcy in behalf of a corporation might be ratified in appropriate circumstances by ensuing conduct of persons with power to have authorized it originally"); *In re Alternate Fuels, Inc.*, No. 09-20173, 2010 WL 4866690 (Bankr. D. Kan. Nov. 23, 2010)("Under Kansas law, as under the Virginia law applied in *Hager*, the unauthorized filing of a voluntary petition of a corporation may be ratified by subsequent acts of the persons with power to have authorized it originally")

[38] *Id.* at *2 (citing *McDonald v. Hamilton Elec., Inc. of Florida,* 666 F.2d 509, 514 (11th Cir. 1982)).

[39] *Hager v. Gibson*, 108 F.3d 35 (4th Cir. 1997); *In re Alternate Fuels, Inc.*, No. 09-20173, 2010 WL 4866690 (Bankr. D. Kan. Nov. 23, 2010); *In re Reliable Air, Inc.*, No. 05-85627, 2007 WL 7136475 (Bankr. N.D. Ga. 2007).

[40] *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1355 (11th Cir. 2011)(quoting *Deutsche Credit Corp. v. Peninger*, 603 So.2d 57, 58 (Fla. 5th Dist.Ct.App.1992)).

unauthorized act.[41] For ratification to apply, "[t]he principal must have full knowledge of the initially unauthorized agents' conduct and approve of that conduct." [42]

Here, the Court finds the Disputed Owners' conduct convincingly demonstrates consent and ratification of the Debtor's bankruptcy filing. They have actively participated in this bankruptcy case, reaping significant benefits from their 18-month stay, to date, before the Bankruptcy Court. They engaged in mediation and reached an extensive, if not global, settlement. And, they signed the Settlement Agreement.

One benefit they received under this settlement is that West no longer manages the Debtor's operations or finances, which they consistently have attacked. Instead, the Disputed Owners selected a professional and proficient CRO who stabilized the business, confirmed valid and valuable leases, completed tenant build-outs, managed the Debtor's finances, paid the secured debt, and collected an excess of over $700,000. The CRO also found a buyer willing to pay $15 million to buy the Debtor's assets, which is the Debtor's primary business purpose and which would have resulted in millions of dollars of distributions to the Debtor's members.

The Disputed Owners, joined by Palinsky, knew of the benefits they received in this bankruptcy case. Yet, for whatever reason, the Disputed Owners want to rock this now steady boat to return to the tumultuous world of litigation between the co-owners.

The Disputed Owners argue they continually reserved their rights to object to this bankruptcy. But, when they simultaneously are receiving substantial benefits, this argument is disingenuous. A case with similar facts to the one here is *In re Alternate Fuels, Inc.*[43] In *Alternate Fuels*, the debtor, an entity formerly operating coal mines, filed for relief under Chapter 11 of the

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[41] *See Molinos Valle* 633 F.3d at 1355.
[42] *Id.* (citing *Frankenmuth Mut. Ins. Co. v. Magaha*, 769 So.2d 1012, 1021–22 (Fla. 2000)).
[43] *In re Alternate Fuels, Inc.*, No. 09-20173, 2010 WL 4866690 (Bankr. D. Kan. Nov. 23, 2010).

Bankruptcy Code. The petition was signed by the company's titular president. The debtor's primary asset was a $7 million judgment due by the State of Missouri.

Two weeks after the bankruptcy filing, Mr. Capito, with a disputed ownership claim who alleged he was the debtor's sole shareholder and also its president, moved to dismiss the case for lack of authority. Mr. Capito then withdrew the motion to dismiss *without prejudice* "to raising the issues contained in the motion to dismiss at a later date." The bankruptcy case then continued smoothly for several months without objection by Mr. Capito. A Chapter 11 Trustee was appointed, similar to the CRO, who assumed management of the debtor's business. About five months *after* withdrawing the motion to dismiss, Mr. Capito filed a second motion to dismiss, similar to the Disputed Owners' motion here, again raising the debtor's lack of authority to file the case.

The Bankruptcy Court for District of Kansas denied the motion to dismiss. Among the basis for denial, the Bankruptcy Court held, if Mr. Capito was the Debtor's sole shareholder and officer, he impliedly ratified the bankruptcy filing by his actions. Applying Kansas state law, which like Florida, allows implied ratification, the Court found by the time Mr. Capito filed his second motion to dismiss the debtor had "benefited from the automatic stay, the orderly claims and interests filing procedure, and the appointment of a trustee with the purpose of undertaking the reclamation process, with the concurrence of the major creditors and the State of Missouri."[44] And, the Court concluded the withdrawal of the earlier motion to dismiss confirmed that Mr. Capito consented to the debtor staying in the Chapter 11 case and receiving the attendant benefits of the Chapter 11 filing.[45] By waiting too long and allowing too much to happen during the Chapter 11 case, Mr. Capito ratified the filing and lost his ability to seek dismissal arguing lack of authority.

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[44] *Alternate Fuels*, 2010 WL 4866690 at 13.
[45] *Id*.

These facts surpass the facts in *Alternate Fuels*. Here, both Debtor and the Disputed Owners have received substantial benefits because of the bankruptcy filing. The Disputed Owners agreed to withdraw the initial motion to dismiss and allow the Debtor to proceed in Chapter 11. Debtor's case was pending for over one year before filing the second motion to dismiss.[46] By accepting the benefits of this bankruptcy filing and agreeing to withdraw its first motion to dismiss, the Court concludes the Disputed Owners impliedly authorized and ratified this bankruptcy filing.

Bad Faith

Courts may dismiss or convert a bankruptcy case under Section 1112(b) of the Bankruptcy Code if the debtor filed a petition for an improper purpose—in "bad faith."[47] When contemplating a "bad faith" dismissal, courts consider whether the debtor filed the bankruptcy case to frustrate the appropriate collection efforts of undisputed and legitimate creditors.[48] These "bad faith" cases generally involve a special purpose legal entity formed to hold one parcel of real property with few or no defenses to the claims of a large secured creditor. The bankruptcy is filed on the eve of a foreclose sale[49] out of desperation[50] and with knowledge the business lacks adequate cash flow or other financial means to sustain a plan of reorganization. A precise test for determining bad faith, however, does not exist.[51] Courts consider indicia that demonstrate overall an "intent to abuse the judicial process and the purposes of the reorganization provisions."[52]

[46] The Motion to Dismiss was filed on January 2, 2019. Doc. No. 267.
[47] *In re Lezdey*, 332 B.R. 217, 222 (Bankr. M.D. Fla. 2005)(citing *In re Singer Furniture Acquisition Corp.,* 254 B.R. 46 (M.D. Fla. 2000)).
[48] *See id.*(citing *In re Phoenix Piccadilly, Ltd.,* 849 F.2d 1393 (11th Cir.1988); *In re Natural Land Corp.,* 825 F.2d 296, 297 (11th Cir.1987); *In re Little Creek Development Co.,* 779 F.2d 1068, 1073 (5th Cir.1986)).
[49] *Natural Land,* 825 F.2d 296.
[50] *In re Dixie Broadcasting, Inc.*, 871 F.2d 1023 (11th Cir. 1989), *cert. denied, Dixie Broadcasting, Inc. v. Radio WBHP, Inc.*, 493 U.S. 853, 110 S.Ct. 154, (1989).
[51] *Natural Land,* 825 F.2d at 298.
[52] *Id.* (quoting *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 674 (11th Cir. 1984)); *see also In re Star Trust*, 237 B.R. 827, 834, n. 3 (Bankr. M.D. Fla. 1999)("'[T]he real test that still remains is the presence of honest intention of the debtor and some real need and real ability to effectuate the aim of the reorganization ...'" (citations omitted)).

The Court concludes that the Debtor did not file this case in bad faith. Although the Debtor is a special purpose LLC who owns a large shopping center, it is not a passive investment. The Debtor has national tenants, is fully leased, and is generating substantial revenue, accumulating over $700,000 during this Chapter 11 case. It has paid its one secured creditor in full. Debtor can pay its debts and propose a confirmable Chapter 11 plan that would cause a substantial return to its owners. So, this Debtor is not trying to "game" the bankruptcy court or abuse the judicial process.

Rather, this Chapter 11 case was filed to stop the endless state court litigation between its alleged but disputed owners, an acceptable reason to file a bankruptcy. Bankruptcy courts, assisted by the automatic stay placing pending litigation on hold, are adept at facilitating asset sales, determining competing claims, and paying legitimate creditors or interest holders.

Debtor was created to be sold. The on-going litigation between the members have held the Debtor hostage for several years preventing any sale. West filed this case attempting to resolve all issues, including the dispute over who are members, and to allow the legitimate members to benefit from an unquestionably good sale proposal. Debtor's actions have not demonstrated an intent to abuse the judicial process or the purposes of the reorganization provisions. No bad faith is demonstrated.

Appointment of a Chapter 11 Trustee

So, after concluding this bankruptcy filing was authorized through the ratification and was not filed in bad faith, the question is what happens next? At a post-trial hearing, I rendered a preliminary ruling denying dismissal and asked the parties to consider renewed mediation efforts. If they were not willing to talk, I asked them for their opinions of how we move forward.[53]

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[53] The trial was held on April 11, 2019. The post-trial hearing was held on May 23, 2019. The parties were directed to file their positions by June 7, 2019.

Both West and the Disputed Owners timely filed their responses.[54] The Disputed Owners reiterated their position seeking dismissal and refusing to consider mediation. West supports further mediation, but only if the Disputed Owners will participate in good faith. He suggested a Chapter 11 Trustee would be "most appropriate in this unique circumstance."

West raises valid points supporting the appointment of a Chapter 11 Trustee. Chapter 11, as opposed to converting this case to Chapter 7, provides more flexibility and would not require payment of any documentary stamp fees upon closing a sale under a plan, which could total a savings of $105,000. And, Chapter 11 Trustees are used to more complex business cases and have the experience to navigate the tumultuous issues between these parties with the authority to recommend creative solutions and compromises. They know how to manage a difficult case, such as this one.

The Court will treat West's Position Statement[55] as a request to appoint a Chapter 11 Trustee. Under §1104(a)(1) of the Bankruptcy Code,[56] the Court finds that, for all the reasons articulated earlier, the appointment of a Chapter 11 Trustee is in the interests of the unsecured creditors held hostage by this dispute between the Debtor's members. Appointment of a Chapter 11 Trustee also is in the Debtor's best interest because the Trustee will have the authority to complete the sale of the Debtor's property, which is the purpose for which it was formed in the most expeditious manner and at the lowest possible administrative cost. And, most important, the appointment of a Chapter 11 Trustee is in the best interest of these feuding equity interest holders because the Trustee can assist in resolving this fierce contest between them. The Court will direct

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[54] Doc. Nos. 356, 357.
[55] Doc. No. 357.
[56] 11 U.S.C. §§101 *et. seq*.

the United States Trustee to select and appoint a Chapter 11 Trustee to assume control of this Chapter 11 case.

The Court implores all parties to consider working together in a conciliatory manner and to seek a practical solution to their disputes. This opinion was crafted to encourage cooperation and give parties an incentive to resolve their differences. Abstention, as requested by the Disputed Owners, merely continues the expensive and prolonged litigation. Abstention is denied.

Accordingly, it is

ORDERED:

1. The Motion to Dismiss (Doc. No. 267) is **DENIED.**
2. The United States Trustee is directed to select and to seek appointment of a Chapter 11 Trustee expeditiously.
3. The Chapter 11 Trustee will confer with all parties, including the CRO and any prospective buyer, and shall file a written report by September 5, 2019.
4. A further status conference is scheduled for **11 a.m. on Monday, September 9, 2019.**

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The Clerk is directed to serve a copy of this order on all interested parties.